

IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE:  
Chapter 7  
Case # 08-14106(REG)  
SYLVIA NUER,  
Debtor.

HELD AT: Law Offices of Linda M. Tirelli  
202 Mamaroneck Avenue  
White Plains, New York 10601  
October 6, 2009  
1:39 p.m.

Examination before Trial of the  
REPRESENTATIVE OF JP MORGAN CHASE BANK, NA,  
by CHARLES HERNDON, pursuant to Court Order,  
held at the above time and place before a  
Notary Public of the State of New York.

*COPY*  
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LOM GET 27 10/11/09  
LAW OFFICES OF LINDA M. TIRELLI  
HEREBY STIPULATED AND  
AGREED, by and between the attorneys for the  
respective parties herein, that the sealing  
and filing of the within deposition be  
waived; that such deposition may be signed  
and sworn to before any officer authorized  
to administer an oath, with the same force  
and effect as if signed and sworn to before  
the officer before whom said deposition is  
taken.

IT IS FURTHER STIPULATED AND  
AGREED, that all objections, except as to  
form, are reserved to the time of trial.

J & L REPORTING SERVICE  
of Westchester, Inc.  
200 East Post Road  
White Plains, New York 10601  
(914) 682-1888  
Lisa Dobbo, Reporter

A P P E A R A N C E S :

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33 Whitehall Street, Floor 21  
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BY: GREG ZIPES, US TRUSTEE

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1 C. HERNDON  
2 CHARLES HERNDON, residing at  
3 C/O 7301 Baymeadows Way,  
4 Jacksonville, Florida 32256,  
5 having been duly sworn by  
6 Notary Public, Lisa Dobbo  
7 testified as follows:  
8 EXAMINATION BY MS. TIRELLI:  
9 Q. Good afternoon and welcome.  
10 State your name for the record,  
11 please and spell it.  
12 A. Charles, C-H-A-R-L-E-S,  
13 Herndon, H-E-R-N-D-O-N.  
14 Q. What is your business address,  
15 Mr. Herndon?  
16 A. 7301 Baymeadows, one word, Way,  
17 Jacksonville, Florida 32256.  
18 Q. What business is at that  
19 address?  
20 A. JP Morgan Chase.  
21 Q. How long have you worked at JP  
22 Morgan Chase?  
23 A. I've worked at Chase since they  
24 acquired Washington Mutual, September 2008.  
25 Q. What's your title there?

1 C. HERNDON  
 2 A. Operations unit manager.  
 3 Q. Is this a servicers division of  
 JP Morgan Chase?  
 A. Yes, ma'am.  
 6 Q. What exactly is your division  
 or department that you're working for?  
 8 A. I work for risk research.  
 9 Q. What does that entail exactly?  
 10 A. Litigation support.  
 11 Q. Have you ever been deposed  
 before?  
 13 A. Yes, ma'am.  
 14 Q. How many times?  
 15 A. Approximately seventy-five.  
 16 Q. In what capacity?  
 17 A. Through work.  
 18 Q. Of the same as what you're  
 doing now, in other words?  
 20 MR. TEITELBAUM: Objection.  
 21 A. Yes, ma'am.  
 22 Q. Were these seventy-five  
 different cases or did seventy-five  
 depositions?  
 25 A. Primarily -- there may have

1 C. HERNDON  
 2 Greg Zipes, US Trustee.  
 3 I want to give you copy of the Notice  
 4 of Deposition and request for production of  
 5 documents that was served in this case.  
 6 MR. TEITELBAUM: Okay.  
 7 MS. TIRELLI: If we can get  
 8 that marked as an exhibit.  
 9 (Whereupon, Debtor's Exhibit 1,  
 10 Notice of Deposition, was marked for  
 11 Identification.)  
 12 Q. Mr. Herndon, you now have in  
 13 front of you what's marked as Debtor's 1  
 14 which is the Notice of Deposition and  
 15 request for production of documents.  
 16 Have you seen this document prior to  
 17 today?  
 18 A. Looks similar to a document  
 19 I've seen. I couldn't attest to whether  
 20 this is a document or not.  
 21 Q. Have you reviewed this prior to  
 22 today?  
 23 A. Not -- no, ma'am.  
 24 Q. But you're here to testify to  
 25 the matters that were requested to be

1 C. HERNDON  
 2 been one or two cases I was deposed more  
 3 than once but approximately seventy-five  
 4 different cases.  
 5 Q. Could you list them?  
 6 A. No, ma'am.  
 7 Q. You're familiar with the  
 8 process of deposition and you understand you  
 9 keep your voice up and the court reporter  
 10 cannot take nods and shakes of the head, you  
 11 understand that; right?  
 12 A. Yes, ma'am.  
 13 Q. If you ask me to repeat  
 14 something I want to make should you  
 15 understand the question. I do not want you  
 16 to guess. I don't want you to assume  
 17 anything. I want you to answer from your  
 18 own personal knowledge; do you understand?  
 19 A. Yes, ma'am.  
 20 Q. For the record, I'm Linda  
 Tirelli and I represent the debtor, Sylvia  
 Nuer. She's not present today. She may be  
 coming today.  
 24 Also present for the record is Jay  
 Teitlebaum who represents Chase Bank and

1 C. HERNDON  
 2 testified before in that document today;  
 3 correct?  
 4 MR. TEITELBAUM: Objection.  
 5 Based on discussions, the scope of  
 6 this -- based on discussions with the  
 7 office of trustees office and you,  
 8 Mr. Herndon, and your notice was here  
 9 to testify with respect to the issue  
 10 of the standing in connection with  
 11 the motion from remove from the stay.  
 12 That's the motion he was presented  
 13 with today.  
 14 We advised you there was no one  
 15 witness who can testify to every  
 16 aspect of your deposition.  
 17 MS. TIRELLI: I do agree it may  
 18 take more than one witness to get  
 19 everything answered.  
 20 Q. My question is merely, have you  
 21 ever seen this document before, Mr. Herndon?  
 22 MR. TEITELBAUM: No, your  
 23 question was whether he was here to  
 24 testify to issues in your Notice of  
 25 Deposition.

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2 whether there's improprieties whether on the  
3 debtor's side or creditor's side. We  
sometimes file papers whether or not we  
think it's appropriate or not, so with that,  
6 I listened to the testimony and I just have  
7 a few questions.

8 Let me just ask you, it sounded as I  
9 listened here you have no personal knowledge  
10 about the motion to vacate that was filed in  
11 this case and the documents that were filed  
12 in this case by JP Morgan Chase; is that  
13 accurate?

14 A. I have no personal knowledge.

15 Q. But you're produced today in  
16 order to tell us about the chain of title  
17 among other things in this case; is that  
18 your understanding why you're here today?

19 A. Yes.

20 Q. Presumably you can tell that to  
21 us today; correct, if I ask you some  
22 questions about it?

23 A. I can do my best.

24 Q. That's all we can ask. I might  
25 be repeating a little bit what we have heard

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2 A. I seen what I believe to be  
3 documents, yes, sir.

4 Q. Let me ask you, you're not  
5 going to have personal knowledge by way of  
6 these motions but I'm going to ask you if  
7 you seen a document attached to JP Morgan  
8 Chase documents that was filed in this case,  
9 I have a binder and I'm going to direct your  
10 attention what I marked as UST Exhibit 15.

11 (Handed)

12 Q. I actually put a yellow sticky  
13 on it.

14 MR. TEITLEBAUM: You want to  
15 mark this?

16 MR. ZIPES: I'll mark it as  
17 UST-1.

18 Look at it and I'll represent  
19 to you, Jay, this is the initial  
20 motion for termination of automatic  
21 stay filed by JP Morgan Chase  
22 National Association dated --

23 MR. TEITLEBAUM: The sticky is  
24 on one page of that.

25 MR. ZIPES: The entire

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2 before but I'll move on quickly, so let's  
3 start we had a note and mortgage in this  
4 case; correct?

5 A. Yes, sir.

6 Q. That note and mortgage was  
7 held, if I understood your testimony  
8 correctly, by Long Beach Mortgage Company  
9 initially?

10 A. They're the originator, yes,  
11 sir.

12 Q. Then you testified, I believe  
13 it went to Long Beach Security Corporation;  
14 correct?

15 A. Long Beach Securities.

16 Q. Then from there it went to  
17 Deutsches Bank National Trust, it just went  
18 from one, two, three, is that your  
19 understanding what happened here in terms of  
20 ownership?

A. That's my understanding.

22 Q. Have you personally seen the  
23 documents that would show this chain of  
24 title, I call it chain of title but these  
25 three owners of the note and mortgage?

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2 document, but the motion is dated  
3 November 14th, 2008 and it's signed  
4 by Maron Buczkowski of Stephen J.  
5 Baum, PC law firm and it's a motion  
6 to terminate.

7 I'll represent, Jay, that I  
8 pulled this off the document and  
9 there's a series attached as Exhibit  
10 A to this motion, and just flip about  
11 --

12 MR. TEITLEBAUM: We got it.

13 Q. Exhibit A, these are the  
14 documents represented by JP Morgan Chase to  
15 show the chain of title in this case.

16 If you turn to the first page of  
17 Exhibit A there's a fixed adjustable rate  
18 note. Do you see that on top there?

19 A. Yes, sir.

20 Q. This shows on -- it's dated  
21 January 6th, 2006?

22 A. Yes, sir.

23 Q. And this shows the borrowers  
24 promise to pay a hundred four thousand  
25 dollars to Long Beach Mortgage Company; do

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2 you see that?

3 A. Yes, sir.

4 Q. Would this be a document you  
5 looked at to establish that Long Beach  
6 Mortgage Company is the initial owner of  
7 this document, of the note and mortgage?

8 A. Well, I did look at this  
9 document, yes, sir.

10 Q. Is this how you formed your  
11 basis that JP Morgan -- that Long Beach  
12 Mortgage Company was the initial owner of  
13 the mortgage company and note?

14 A. They're the initial lender,  
15 yes, sir.

16 Q. Is there any other documents  
17 you would have referred to?

18 A. Well, the mortgage, the actual  
19 mortgage.

20 Q. If you turn a little bit  
21 further, I think it's there.

22 A. Yes, sir, it's further in  
23 there.

24 Q. But these would have been the  
25 two documents you would have looked at to

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2 with everything but do you happen to know if  
3 the mortgage loan document that you're  
4 referring to now was attached as a document  
5 in the bankruptcy proceeding by JP Morgan  
6 Chase at anytime?

7 MR. TEITLEBAUM: Just give me a  
8 second.

9 Off the record.

10 (Whereupon, a discussion was  
11 held off the record.)

12 MR. ZIPES: I just ask that you  
13 review your files and see if it's  
14 been filed in some way with the  
15 court. I can represent to you that I  
16 didn't see it but that's not to say  
17 --

18 MR. TEITLEBAUM: My  
19 recollection is that it is not part  
20 of the filing that was made by the  
21 Baum office in connection with the  
22 MFO. What I'm trying to recollect  
23 and give me half a second -- I don't  
24 believe it was attached to any of the  
25 pleadings filed thus far in the case.

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2 establish that, that Long Beach Mortgage  
3 Company was the initial owner?

4 A. Yes, sir.

5 Q. You also testified that Long  
6 Beach Securities Corporation was the next  
7 owner of this.

8 As you flip through Exhibit A, I  
9 couldn't see anything at least in Exhibit A,  
10 it's not to say you haven't reviewed  
11 something. I couldn't see anything in  
12 Exhibit A that shows ownership to Long Beach  
13 Security; is that correct?

14 A. I don't know.

15 Q. But, there is -- did you review  
16 a note and mortgage similar to this that  
17 shows it went to Long Beach?

18 A. Not in those.

19 Q. What did you review?

20 A. I believe it was entitled a  
mortgage loan purchase agreement. I think  
21 that was the title.

22 Q. Again, you're not personally  
familiar with what's been filed but do you  
23 know -- you're not specifically familiar

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2 MR. ZIPES: I would ask you  
3 produce that document and it may have  
4 been produced already.

5 MR. TEITLEBAUM: Well, it was  
6 produced to Ms. Tirelli. I'm happy  
7 to send you copy of it.

8 MR. ZIPES: Would you mind  
9 because I don't have it. Would you  
10 mind giving it to the witness and  
11 just having him see that and testify  
12 that's what he reviewed.

13 MR. TEITLEBAUM: Sure. If  
14 you'd like, do you want to make copy  
15 of it so we can mark it as an  
16 exhibit?

17 MS. TIRELLI: Sure.

18 MR. ZIPES: Off the record.

19 (Whereupon, a discussion was  
20 held off the record.)

21 MR. ZIPES: Let's move on while  
22 we're waiting for copy to the third  
23 owner of this property which is  
Deutsche Bank.

24 Q. Can you, again I'll refer you

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2 A. Yes, sir.

3 Q. Have you seen any proof that  
there was a recording of the Long Beach  
Securities Corp from or Long Beach Mortgage  
Trust 2006-2 in any of your review of the  
documents?

8 MR. TEITLEBAUM: Excuse me,  
9 proof of recording of the transfer?

10 MR. ZIPES: The transfers.

11 A. I mean, there's -- the  
12 documents, Exhibit 2 and Debtor's Exhibit 2  
13 and UST Exhibit 2, I don't know whether  
14 these documents need to be recorded.

15 Q. That wasn't my question.

16 I'm asking if you seen any documents  
17 evidencing any recordings of these  
18 assignments.

19 A. Not that I can recall.

20 Q. So, let me turn you back to UST  
21 Exhibit 1 for a moment and this is the  
22 motion to vacate the stay which you don't  
23 have a lot of personal knowledge about but  
24 to make it a little easier I put a little  
25 sticky, that's my little sticky, this was

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2 filed as part of the motion to vacate the  
3 stay and this is the assignment of mortgage;  
4 do you see that?

5 A. Yes, sir.

6 Q. So, this assignment of  
7 mortgage -- what is an assignment of  
8 mortgage in your understanding?

9 A. It is assigning a mortgage from  
10 one -- from one entity to another or one  
11 person to another.

12 Q. Do you see that line assignor  
13 JP Morgan Chase Bank National Association?

14 A. Yes, sir.

15 Q. And the assignee is Deutsches  
16 Bank National Trust Company as trustee for  
17 Long Beach Mortgage Trust 2006-2; do you see  
18 that?

19 A. Yes, sir.

20 Q. What is your understanding of  
what's being assigned here?

22 A. My understanding it's assigning  
23 the mortgage.

24 Q. So, how does that -- I'm just  
25 trying to understand in chain of title, is

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2 there another piece of this chain of title  
3 of who owned the mortgage?

4 A. Not that I'm aware of, no, sir.

5 Q. Can you explain this document?

6 A. No, sir. This was prepared at  
7 the request of counsel -- of foreclosure or  
8 bankruptcy counsel, default counsel and I  
9 was not involved in creation of this  
10 document.

11 Q. It appears to be assignment of  
12 the mortgage, so correct?

13 A. That's what it's titled, yes,  
14 sir.

15 Q. Let me turn to the servicers of  
16 the note and mortgage.

17 We went through chain of title here,  
18 the servicers. I think you testified before  
19 that WaMu was a servicer of the note and  
20 mortgage and JP Morgan sort of took over the  
21 servicing, that's your understanding of JP  
22 Morgan Chase's involvement in the case

23 A. Yes, sir.

24 Q. Is that the totality of the  
25 servicers with respect to this note and

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2 mortgage throughout the life of it?

3 A. Well, again, it was originated  
4 by Long Beach Mortgage Company, Washington  
5 Mutual became servicer and then JP Morgan  
6 Chase, yes.

7 Q. So, when did WaMu become the  
8 servicer of the mortgage?

9 A. In January of 2006.

10 Q. What document did you review to  
11 reach that conclusion?

12 A. There's a reference in here  
13 specifically indicating -- I apologize.

14 Q. That's fine.

15 MR. TEITLEBAUM: Want to help  
16 him move it along?

17 MR. ZIPES: I'm just asking the  
18 witness what he reviewed.

19 MR. TEITLEBAUM: Do you want to  
20 make copies of these two letters?

21 MR. ZIPES: We'll mark those as  
22 UST Exhibit 3. Do we want to  
23 interrupt the flow?

24 MR. TEITLEBAUM: It directly  
25 answers your question. Can we get